In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1368

OSCAR LEE BELVINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial, petitioner was convicted in the United States District Court for the Middle District of Georgia of having possession, custody, and control of an unregistered still in violation of 26 U.S.C. 5601 (a).[1] He was sentenced to imprisonment for a year and a day. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner does not question the sufficiency of the evidence. His only contention is that the prosecutor exceeded the bounds of argument in his closing summation. The distillery which petitioner operated was located in the Americus Division of the Middle District of Georgia and the indictment was returned by a

[1] The jury acquitted petitioner on three other counts.

grand jury sitting in that Division. The case was tried, however, in the Macon Division of that District. In his closing argument, government counsel stated (I.R. 57):

> Now, the jury is a great system. One of the regrets of my life is that I can never serve, that I'll never be able to serve on the jury. I wish that I could. It's a high duty and a privilege to be a juror. And in this situation the duty is higher, because you are here to pass on a case, not in the Macon Division although you are a Macon Division jury, but you're here to pass on a case from the Americus division. You have to do your duty, not only to yourselves and the Defendant and the Government and the people of this Division, but for the Americus Division.

No objection was made to the argument. In requesting exceptions to the court's instructions, defense counsel asked "* * * whether or not there was any reason why [it] should be clarified as to why this case was being tried here instead of down at Americus" (I R. 79). The trial judge indicated that he would let the instructions stand as given and no further objection was made.

In these circumstances, the court of appeals properly declined to find reversible error in the reference to the Americus Division. In context, the rhetoric merely emphasized to the jury their duty—to both the government and the defendant—to base their verdict on the evidence presented at trial. Petitioner's suggestion that the argument improperly prejudiced him in the eyes of the jury ignores the overwhelming evi-

dence showing his connection with the illegal distilling operation.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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